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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

1791 MANAGEMENT, LP, a Delaware
limited partnership,

Plaintiff,

v.

ENERGY VAULT, INC., a Delaware corporation; ROBERT A. PICONI, an individual; WILLIAM T. GROSS, an individual; ZIA HUQUE aka TAHSINUL ZIA HUQUE, an individual; HENRY J. ELKUS, an individual; ANDREA S. PEDRETTI aka ANDREA PEDRETTI RODI, an individual; ANDREA E. WUTTKE, an individual; NOVUS CAPITAL CORPORATION II, a Delaware corporation; ROBERT J. LAIKIN, an individual; LARRY M. PAULSON, an individual; JEFFREY D. FOSTER, an individual; ENERGY VAULT HOLDINGS, INC., a Delaware corporation; (and DOES 1 through 25, inclusive,

Defendants.

Case No.

[Los Angeles County Superior Court
Case No. 22STCV16538]

DEFENDANT ENERGY VAULT HOLDINGS, INC.'S NOTICE OF REMOVAL

Action Filed:	May 18, 2022
1AC:	June 24, 2022
2AC:	Sept. 13, 2022
3AC:	June 2, 2023
Removal:	July 3, 2023

NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, Defendants Energy Vault, Inc., Energy Vault Holdings, Inc., and the named Individual Defendants (collectively “Energy Vault”) hereby remove to this Court this action (the “Action”) from the Superior Court of California for the County of Los Angeles.

1. As set forth below, this Court has original jurisdiction over the Action pursuant to 28 U.S.C. §§ 1331 and 1367, because this matter is a civil action arising, in part, under the laws of the United States—namely, 15 U.S.C. §§ 77(a) *et seq.*, or the Securities Act of 1933 in conjunction with the federal forum provision in Energy Vault’s charter—and in part under state law claims that are subject to supplemental jurisdiction under 28 U.S.C. § 1367.

2. By filing this Notice of Removal, Energy Vault does not intend to waive, and hereby reserves, any objection as to venue, the legal sufficiency of the claims alleged in the Action, the procedural sufficiency of the Third Amended Complaint, and all other defenses. Energy Vault reserves the right to supplement and amend this Notice of Removal.

BACKGROUND

3. On May 18, 2022, Plaintiff 1791 Management LP (“Plaintiff”) commenced this action by filing a complaint in the Superior Court of California for the County of Los Angeles (“Original Complaint”) captioned *1791 Management LP v. Energy Vault, Inc., et al.*, (Case Number 22STCV16538). The Complaint alleged that Energy Vault violated California law by making certain misrepresentations about Energy Vault’s expected revenue and anticipated projects with a company called DG Fuels, which induced Plaintiff to invest in Energy Vault warrants. Specifically, the Original Complaint advanced causes of action for: (1) Breach of Fiduciary Duty; (2) Intentional Misrepresentation of

1 Material Facts; (3) Negligent Misrepresentation; (4) Negligence; (5) Constructive
2 Fraud; and (6) Market Manipulation (Corp. Code § 25400).

3 4. On June 24, 2022, Plaintiff filed its First Amended Complaint alleging
4 the same claims. The First Amended Complaint included additional factual
5 allegations regarding Energy Vault's alleged misrepresentations and
6 recharacterized the sixth cause of action as "Violation of Corporations Code
7 §§ 25400-25550."

8 5. On September 13, 2022, Plaintiff filed its Second Amended
9 Complaint, which added Novus Capital Corporation II ("Novus") and nine
10 individuals as defendants. Plaintiff alleged the nine individuals were directors
11 and/or executives of Energy Vault, Inc. or Novus. Plaintiff also added a seventh
12 cause of action for "Violation of Corporations Code §§ 25100-25118."

13 6. Energy Vault and the individual defendants filed demurrers to the
14 Second Amended Complaint, which were heard and ruled on separately.

15 7. On November 11, 2022, the Los Angeles Superior Court sustained
16 Energy Vault's demurrer as to the "Breach of Fiduciary Duty" and "Constructive
17 Fraud" causes of action without leave to amend, on the basis that because Plaintiff
18 did not allege it was an Energy Vault shareholder, it was owed no fiduciary duty
19 and these claims failed as a matter of law.

20 8. On May 15, 2023, the Los Angeles Superior Court sustained the
21 individual defendants' demurrers as to the "Breach of Fiduciary Duty," "Negligent
22 Misrepresentation," "Negligence," and "Constructive Fraud" cause of action, with
23 leave to amend.

24 9. On June 2, 2023, Plaintiff filed its Third Amended Complaint
25 ("3AC"). The 3AC advanced five causes of action for: (1) Breach of Fiduciary
26 Duty; (2); Common Law Fraud; (3) Constructive Fraud; (4) Violation of
27 Corporations Code §§ 25110-25118; and (5) Violation of Corporations Code
28

1 §§ 25400-25550. The 3AC also purported to add Energy Vault Holdings, Inc. as a
2 new defendant.

3 10. For the first time, the 3AC alleged that Plaintiff purchased Energy
4 Vault stock and options. The 3AC also alleges that Energy Vault violated federal
5 law by, among other things, violating federal regulations regarding the
6 requirements to form a lawful Special-Purpose Acquisition Companies (“SPAC”),
7 and failing to file a compliant S-1 Securities Registration Statement, thereby
8 violating federal regulations for Energy Vault’s lawful registration with the U.S.
9 Securities and Exchange Commission (“SEC”).

10 11. Defendants deny liability and deny that Plaintiff suffered any damages
11 by reason of any allegation in the 3AC.

12 **GROUND FOR REMOVAL**
13 **(FEDERAL QUESTION JURISDICTION)**

14 12. Federal question jurisdiction arises here for two separate and
15 independent reasons. First, Plaintiff’s claims arise under federal law and are
16 subject to Energy Vault’s federal forum provision. Second, Plaintiff’s claims
17 present a “substantial federal question.”

18 13. 28 U.S.C. § 1441(a) authorizes a defendant to remove from state court
19 to federal court “any civil action brought in a State court of which the district
20 courts of the United States have original jurisdiction.” That is, a defendant may
21 remove a state court lawsuit to federal court if the plaintiff could have brought the
22 case in federal court in the first instance. 28 U.S.C. § 1441.

23 14. Pursuant to 28 U.S.C. § 1331, this Court has original jurisdiction over
24 any lawsuit “arising under the Constitution, laws, or treaties of the United States.”
25 A lawsuit “arises under: the laws of the United states if a federal question is
26 presented in the plaintiff’s “well-pleaded complaint.” *E.g., Caterpillar, Inc. v.*
27 *Williams*, 482 U.S. 386, 392 (1987). Under the “well-pleaded complaint” rule, an
28 action “arises under” federal law for the purposes of Section 1331 “when a federal

question is presented on the face of the plaintiff's properly pleaded complaint.”
Daniher v. Pixar Animation Studios, No. 22-CV-00372-BLF, 2022 WL 1470480,
 at *2 (N.D. Cal. May 10, 2022) (quoting *Caterpillar*, 482 U.S. at 392).

15. This lawsuit arises from the formation of Defendant Novus Capital Corporation II as a Special-Purpose Acquisition Company (“SPAC”), its initial public offering (“IPO”), and subsequent business combination with Energy Vault, pursuant to the Securities Act of 1933 and SEC regulations.

16. Plaintiff alleges, *inter alia*, that it acquired warrants and shares in Energy Vault, Inc. and/or EVH in reliance on Defendants’ representations that the SPAC complied with federal law, that this representation was incorrect because Defendants violated federal law, and that Plaintiff suffered injury as a result. *See, e.g.*, 3AC ¶¶ 4-7; 31-33.

17. Plaintiff alleges that Defendants violated federal law as follows:

- a. “**Federal regulations require** that a SPAC has not identified a target business when issues its IPO. Defendant Novus and its officers and directors purported to comply with this requirement in the documents they filed with the SEC. . . . On information and belief, Plaintiff alleges that Novus had already identified EV as its target business for the SPAC IPO.” *Id.* at ¶¶ 5-6 (emphasis added).
- b. “Novus was not a lawfully compliant SPAC, EV was not properly registered with the SEC as a public company, and its shares did not meet SEC conditions for sale to the public.” *Id.* at ¶ 6.
- c. “Defendants, on information and belief, falsely claimed that Novus is a SPAC in order to register the warrants and make EV’s shares more attractive to investors, including Plaintiff.” *Id.* at ¶ 7.
- d. “Novus sponsored EV’s move from private to public business, based on Defendants’ claim that Novus is a SPAC and is therefore permitted

to take private businesses public **under certain federal laws and regulations** regarding SPACs.” *Id.* at ¶ 31 (emphasis added).

- e. “**Federal laws and regulations require** that a SPAC cannot have identified a target business when it issues its IPO . . . Contrary to the representations in its S-4 statement, Novus had already identified EV as its target business for the SPAC IPO.” *Id.* at ¶¶ 32-33 (emphasis added).
- f. “Novus was not a lawful SPAC, its successor EVH was not properly registered with the SEC as a public company, and EVH’s shares could not have been approved by the SEC for sale to the public.” *Id.* at ¶ 33.
- g. “Defendants falsely claimed that Novus was a SPAC.” *Id.* at ¶ 41.
- h. In addition, Plaintiff alleges that Defendants “deliberately delayed filing EVH’s S-1 Form with the SEC, thereby preventing warrant shareholders from exercising conversion rights during that period.” *Id.* at ¶ 51.

18. These claims squarely allege that Defendants violated federal laws and regulations when it formed the Novus SPAC, pursued an IPO, and registered EVH shares for sale to the public.

19. Plaintiff’s claims therefore necessarily “arise under” the Securities Act of 1933 and its implementing regulations, notwithstanding that Plaintiff has styled them as state law claims. *See, e.g., Country Club Estates, L.L.C. v. Town of Loma Linda*, 213 F.3d 1001, 1004 (8th Cir. 2000) (complaint that referenced violations of the federal Constitution “was properly removed” even though most of the complaint alleged violations of state law); *Wisconsin Dept. Of Corrections v. Schacht*, 524 U.S. 381, 386 (1998) (“[T]he presence of even one claim ‘arising under’ federal law is sufficient to satisfy the requirement that the case be within the original jurisdiction of the district court for removal.”).

1 20. In addition, although in certain circumstances 15 U.S.C. § 77v(a)
2 prohibits defendants from removing under the Securities Act of 1933, California
3 courts have confirmed that Securities Act claims may be removed to federal court
4 if the company’s corporate charter has a “federal forum” selection provision. *See*
5 *Wong v. Restoration Robotics, Inc.*, 78 Cal. App. 5th 48, 80 (2022) (allowing
6 removal of Securities Act claims to federal court pursuant to company’s federal
7 forum provision).

8 21. Energy Vault’s S-4 form (Declaration of John Worden, **Exhibit C**)
9 provides: “Unless the Corporation consents in writing to the selection of an
10 alternative forum, the federal district courts of the United States of America shall
11 be the exclusive forum for the resolution of any complaint asserting a cause of
12 action arising under the Securities Act of 1933, as amended.”

13 22. Plaintiff’s 3AC alleges violations of federal regulations regarding the
14 SPAC process and SEC requirements for registration as a public company, which
15 necessarily implicate the Securities Act of 1933 and its implementing regulations.
16 Removal is therefore proper, pursuant to Energy Vault’s federal forum provision
17 and the Securities Act of 1933.

18 23. In addition, a complaint raising substantial federal questions on the
19 face of the complaint should be heard by the federal court if a federal issue is (1)
20 necessarily raised in the state law claim; (2) actually disputed; (3) substantial; and
21 (4) “capable of resolution in federal court without disrupting the federal-state
22 balance approved by Congress.” *Gunn v. Minton*, 568 U.S. 251, 258 (2013);
23 *Grable & Sons Metal Prods. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314 (Federal
24 courts have jurisdiction under 28 U.S.C. § 1331 over “a state law claim [that]
25 necessarily raise[s] a stated federal issue, actually disputed and substantial, which a
26 federal forum may entertain without disturbing any congressionally approved
27 balance of federal and state judicial responsibilities.”).

28

1 24. Plaintiff's 3AC requires the resolution of a substantial question of
2 federal law involving a significant federal interest.

3 25. First, as explained above, the 3AC alleges that Defendants violated
4 federal securities law because Energy Vault was identified as a target business for
5 the SPAC IPO in violation of federal regulations, EVH was not properly registered
6 with the SEC as a public company, and its shares did not meet SEC conditions for
7 sale to the public. Plaintiff alleges it relied on Defendants' alleged
8 misrepresentations about their compliance with federal law and SEC regulations
9 when it purchased warrants and shares in Energy Vault, Inc. and/or EVH.
10 Defendants' alleged violations of federal law are therefore a necessary element of
11 Plaintiff's purported state law claims. In order to adjudicate these claims, it will be
12 necessary for the court to determine whether Defendants did in fact violate federal
13 law. This inquiry will necessarily require the court to interpret and apply the
14 Securities Act of 1933 and its implementing regulations.

15 26. Second, the federal issues are actually disputed because Defendants
16 deny that they violated any federal (or state) laws or regulations.

17 27. Third, the federal interest in the issues raised is substantial because the
18 3AC's claims are premised on the failure of Defendants to abide by *federal*
19 *securities law*, and federal securities law is at the heart of the lawsuit. The
20 determination of whether EVH properly satisfied its obligations under the
21 Securities Act of 1933 sensibly belongs in a federal court.

22 28. Lastly, the exercise of federal jurisdiction would not disturb any
23 Congressionally approved balance of federal or state judicial responsibilities
24 because federal courts already hear these precise types of securities cases as set
25 forth under 15 U.S.C. §§ 77(a).

26 29. These allegations, which support all of Plaintiff's causes of action,
27 raise federal questions on the face of the complaint, and the Court, therefore, has
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1 federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and removal
2 jurisdiction pursuant to 28 U.S.C. § 1441(a).

3 SUPPLEMENTAL JURISDICTION

4 23. In addition, Plaintiff alleges that Energy Vault violated California
5 state law through the *same* alleged conduct. *See generally*, 3AC.

6 24. This Court has supplemental jurisdiction over “all claims that are so
7 related . . . that they form part of the same case or controversy.” 28 U.S.C. § 1367.
8 In order to exercise supplemental jurisdiction, two conditions must exist: (1) there
9 must exist a federal claim, and (2) the non-federal claim must arise “from a
10 common nucleus of operative fact” such that a plaintiff “would ordinarily be
11 expected to try them in one judicial proceeding.” *United Mine Workers of Am. v.*
12 *Gibbs*, 383 U.S. 715, 725 (1966).

13 25. Here, Plaintiff’s state law causes of action are “so related [to its
14 federal causes of action] . . . that they form the same case or controversy,” and are
15 therefore subject to the jurisdiction of this Court. 28 U.S.C. § 1367(a).

16 26. As set forth above, there exist multiple federal allegations on the face
17 of Plaintiff’s 3AC: (1) Energy Vault was identified as a target business for the
18 SPAC IPO in violation of federal regulations; (2) Energy Vault was not properly
19 registered with the SEC as a public company; and (3) Energy Vault’s shares did
20 not meet SEC conditions under the Securities Act of 1933 for sale to the public.
21 *See* 3AC ¶¶ 4-6; 31-33; 50-51; 77.

22 27. Plaintiff’s state law causes of action not only rely upon a “common
23 nucleus of operative fact,” they state identical claims for relief based on the same
24 allegations and facts. Plaintiff’s 3AC plainly alleges that Energy Vault violated
25 federal regulations and the Securities Act of 1933, in addition to state laws.

26 28. Accordingly, the Court has supplemental jurisdiction over Plaintiff’s
27 state law claims, and these claims are also subject to removal under 28 U.S.C.
28 § 1441(a); *City of Chicago v. Int’l Coll. Of Surgeons*, 522 U.S. 156, 165 (1997)

(supplemental jurisdiction applies “with equal force to cases removed to federal court as to cases initially filed there”).

29. None of the grounds upon which the Court may decline to exercise supplemental jurisdiction is present here. *See* 28 U.S.C. § 1367(c). Plaintiff’s state claims are not novel or complex and do not substantially predominate over the federal allegations; the federal allegations have not been dismissed; and there are no exceptional circumstances or compelling reasons for declining jurisdiction. Consequently, this Court should exercise supplemental jurisdiction over Plaintiff’s state law claims. *See, e.g., Executive Software N. Am., Inc. v. U.S. Dist. Court for the Central Dist. of Cal.*, 24 F.3d 1545, 1556 (9th Cir. 1994) (“If the claim is within the court’s supplemental jurisdiction, the court must exercise such jurisdiction unless one of the four categorical exceptions in § 1367(c) is satisfied.”) (internal quotation marks omitted), *overruled on other grounds by Cal. Dept. of Water Resources v. Powerex Corp.*, 553 F.3d 1087 (9th Cir. 2008).

PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED

30. This notice of removal is timely filed under 28 U.S.C. § 1446(b)(1), as it is filed within 30 days of Energy Vault Holdings, Inc.’s (EVH’s) receipt of the 3AC.

31. EVH obtained a copy of Plaintiff’s 3AC on June 2, 2023, and was not named as a defendant in either the First or Second Amended Complaints. The filing of this notice of removal, therefore, is timely because EVH is filing it “within 30 days after receipt by the defendant, through service or otherwise, of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” 28 U.S.C. § 1446(b)(1).

32. In addition, removal is timely under 28 U.S.C. § 1446(b)(3) because the 3AC alleges for the first time that “EVH was not properly registered with the SEC as a public company, and EVH’s shares could not have been approved by the SEC for sale to the public” and that Plaintiff purchased EVH shares. 3AC at ¶ 33.

1 33. As required by 28 U.S.C. §1446(a), copies of the 3AC and other
2 papers filed in the state court action are attached to the Declaration of John
3 Worden as **Exhibit B**.

4 34. Pursuant to 28 U.S.C. §§ 84(c), 1441(a), and 1446(a), this notice of
5 removal is being filed with the United States District Court for the Central District
6 of California, which is the federal court embracing the state court where this action
7 was filed.

8 35. Pursuant to 28 U.S.C. § 1446(d), EVH is filing with the clerk of the
9 Superior Court of the State of California for the County of Los Angeles, and
10 serving upon Plaintiff a Notice to Adverse Party and State Court of Removal of
11 Action to Federal Court. Proof of the same will be filed with this Court.

12 36. EVH has complied with 28 U.S.C. § 1446(b)(2)(A) in that all
13 defendants state their consent to this removal.

14 37. Defendants Energy Vault, Inc., Henry Elkus, William Gross, Zia
15 Huque, Andrea Pedretti, Robert Piconi, Andrea Wuttke, Jeffrey Foster, Robert
16 Laikin, Larry Paulson, Novus Capital Corporation II, and Energy Vault Holdings,
17 Inc., all consent to removal as required under 28 U.S.C. § 1446(b)(2)(A).

18 38. No previous application has been made for the relief requested herein.

19 39. This notice of removal has been signed pursuant to Fed. R. Civ. P. 11.

20 40. If Plaintiff seeks to remand this case to state court, EVH respectfully
21 asks that it be permitted to brief and argue the issue of this removal prior to any
22 order remanding the case. If the Court decides that remand is proper, EVH asks
23 that the court retain jurisdiction and allow it to file a motion asking this Court to
24 certify any remand order for review by the Ninth Circuit, pursuant to 28 U.S.C. §
25 1292(b).

CONCLUSION

41. Based on the foregoing, EVH removes the Los Angeles Superior Court action to this Court.

Dated: July 3, 2023

VENABLE LLP

By: 

John S. Worden

Attorneys for Defendants Energy Vault Holdings, Inc., Energy Vault, Inc., Henry Elkus, William Gross, Zia Huque, Andrea Pedretti, Robert Piconi, Andrea Wuttke, Jeffrey Foster, Robert Laikin, and Larry Paulson.

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